

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ROBERT J. LABONTE,

Plaintiff,

v.

UNITED STATES,

Defendant.

No. 18-1784C

(Chief Judge Sweeney)

**DEFENDANT'S MOTION FOR AN
ENLARGEMENT OF TIME TO RESPOND TO THE COMPLAINT**

Defendant, the United States, respectfully requests that the Court grant a 14-day enlargement of time, from May 3, 2019, to and including May 17, 2019, to respond to the complaint in this action. We have not yet heard back from plaintiff's counsel regarding whether plaintiff intends to oppose this motion. The Court has granted two prior motions for extensions of time totaling 28 days for the Government to respond to the complaint. In addition to those extensions, the original deadline to respond to the complaint had been reset due to issues related to the lengthy lapse of appropriations that began at the end of 2018 and continued into 2019.¹

This military pay case presents complex legal issues. We have worked diligently on our response to the complaint. Specifically, undersigned counsel prepared a lengthy motion to dismiss that addresses all of the claims in the complaint, obtained supervisory and agency

¹ At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. As a result, undersigned counsel was furloughed for approximately five weeks and was only able to perform minor work on his cases, including filing motions to stay proceedings due to the lapse. On January 18, 2019, the Court issued an order staying this case pending Congress' appropriation of funds to the Department of Justice. ECF No. 9. The Court lifted the stay on February 6, 2019. ECF No. 11. On February 20, 2019, the Court set a revised deadline of April 5, 2019 for the Government to respond to the complaint. ECF No. 13.

comments on the draft motion, spent significant time revising the draft motion, and has submitted the revised draft for further supervisory review.

Based on the supervisory review process and internal discussions, which are ongoing, we have determined that we require additional time to file our dispositive motion. In particular, we are discussing additional revisions to our motion, most significantly incorporating a motion for judgment on the administrative record into our dispositive motion, as a potential alternative ground for relief. This would require us to file the administrative record, and to develop and prepare additional arguments.

We apologize to the Court and to the plaintiff for the additional delay caused by this enlargement request. The decision to seek this enlargement of time was not made until today, following supervisory consultation. The goal of the proposed extension is to prepare a dispositive motion that not only will assist the Court in resolving the relevant issues, but to place the case on a procedural path that will lead to the most efficient resolution of this case. Incorporating a motion for judgment on the administrative record into our dispositive motion at this time should minimize the number of briefs that the parties will be required to file in the event that the Court denies our motion to dismiss, which could ultimately lead to a more expeditious resolution of this case.

For these reasons, we respectfully request that the Court grant this motion for an enlargement of time.

Respectfully Submitted,

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Director

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